

Honorable Howard Cannon, Chairman  
Committee on Rules and Administration  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

S. Res. 400, which would establish a new Senate standing Committee on Intelligence Activities, has been referred to the Committee on Rules and Administration. I view this resolution as critical to future relations between Congress and the Executive in the foreign intelligence field, and extremely important to the ability of this Agency to fulfill its statutory mission. Because of the importance of this resolution, I am submitting my views for your consideration.

Mr. Chairman, the Central Intelligence Agency welcomes strong and effective congressional oversight. But the Congress should insure that oversight enhances, rather than hinders, the smooth functioning of this nation's foreign intelligence effort. I believe that certain sections of S. Res. 400, in its present form, would unnecessarily hinder our foreign intelligence effort.

Exclusivity of Jurisdiction of CIA

This Agency has viewed with alarm the increasing number of committees which in the past year have asserted jurisdiction over aspects of CIA's activities. Because of the danger this poses for the disclosure of sensitive information, it is my position that oversight should be concentrated exclusively in the minimum number of committees required to effectively conduct it. The Government Operations Committee arrived at a similar conclusion. Its report on S. Res. 400 stated:

"The Committee was ... very aware of the need to reduce the proliferation of committees [involved in oversight of CIA]. This resolution has been drafted with this concern in mind." (S., Rept. 94-675)

The changes in the charters of other relevant committees, in Section 3 of S. Res. 400, would contribute to exclusivity of jurisdiction. However,



these changes would not, by themselves, accomplish jurisdictional exclusivity. The Appropriations Committee has, since the inception of CIA, been involved in the oversight process. We believe a separate review by the Appropriations Committee is probably desirable. However, the Senate Budget Committee, which heretofore has not requested access to sensitive CIA budgetary information, is now seeking this information. We believe that this is duplicative, undesirable and should be the subject of negotiations between the Appropriations and Budget Committees. Moreover, under Section 662 of the Foreign Assistance Act of 1961 (enacted as P.L. 93-559), information regarding covert action is reported to three committees of the Senate--Appropriations, Armed Services, and Foreign Relations. (Reports are also made to the corresponding committees of the House.) S. Res. 400 will not affect these reporting responsibilities.

Section 7(c)(2) of S. Res. 400 further diminishes the effect of Section 3 on jurisdictional exclusivity. This section expressly permits the proposed committee and its members to disclose any committee information to any other Senate committee or individual Senator. Furthermore, any member who learns information in this manner may also disclose it to any other Senator. While such a provision is arguably necessary for substantive intelligence, I can see no justification for unlimited dissemination of information about this Agency's sources and methods. Section 7(c)(2) negates a major advantage of jurisdictional exclusivity--halting the proliferation of sensitive operational information throughout the Congress.

#### Disclosure of Executive Branch Information

Section 7(a) asserts the authority of the proposed committee to disclose information provided by the Executive branch, even over the objections of the President. Section 7(b) outlines the procedures to be followed in making such disclosures. CIA strongly opposes these sections.

It is the position of the Executive branch that it controls the declassification of Executive branch information. Former Assistant Attorney General Robert G. Dixon testified in May 1974 before a subcommittee of the Senate Government Operations Committee on this point:

"It would seem to follow in light of the President's special powers over foreign relations and national defense that the power and duty to classify national security information is equally within the Executive domain. Moreover, because we are dealing with national security information, the Executive claim to control the declassification decision is even stronger."

On a practical level, these disclosure provisions would obstruct cooperation of this Agency with the proposed committee, by establishing an unavoidably adversarial relationship between them. This would particularly be so if the committee were to establish a procedure, suggested in the Government Operations Committee report, whereby the committee reviewed all classified information as soon as received, with an eye to releasing as much as possible.

An associated problem concerns the congressional mandate in the National Security Act of 1947, as amended, that the Director of Central Intelligence be "responsible for protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C. 403). The acceptance by the Senate of Section 7 of S. Res. 400 would create a conflict for the DCI, who on the one hand must cooperate with the Congress, but who would be violating his statutory responsibility if he did so, by submitting intelligence sources and methods information to Congress with no assurance that it will be protected.

It is my recommendation that the sections permitting the Senate to disclose Executive branch information over the objection of the President be deleted from S. Res. 400. With one or two exceptions, this problem has always been solved informally to the mutual satisfaction of the Agency and committee concerned. If, based on the committee's experience and the proposed committee's study of this problem (required by Section 12(a)(5) of S. Res. 400), the committee believes such authority is essential to its work, it can seek it then. Public disclosure of sensitive intelligence information is not synonymous with strong and effective congressional oversight. I believe the passage of such a provision could deter the flow of sensitive information, and thus inhibit effective oversight.

#### Authorization of Appropriations

Section 11 of S. Res. 400 establishes a Senate procedure which would compel the passage of a periodic authorization bill for funds for the activities of this Agency, despite Section 8 of the Central Intelligence Agency Act of 1949, which provides continuing authorization authority for CIA. CIA opposes such a requirement. One purpose of Section 8 of the CIA Act was to protect against disclosure of the CIA budget. The Senate, in June 1974, and the House of Representatives, in October 1975, rejected moves to require disclosure of intelligence budgets. Normal authorization procedures would bring about the disclosure of the budgets of the intelligence agencies and result in adverse consequences, which are discussed in the enclosure.

The purpose sought to be advanced by an authorization requirement is to provide the proposed committee a means to influence the size and program content of the intelligence budgets. According to the Government Operations Committee report on S. Res. 400, an authorization requirement "should assure a regular review of each agency's intelligence activities, its efficiency, and its priorities." This Agency would welcome such a review by the proposed committee, but must oppose any method to accomplish it which would disclose the intelligence budget. One possible alternative is to give the proposed committee authorization powers over those intelligence funds now subject by law to an annual authorization, and to require the committee to submit a classified report on proposed funding levels to the Armed Services Committee for appropriate inclusion in the annual Defense authorization bill. The resolution might also require the committee to review all intelligence funds not subject to an annual authorization requirement. The committee could be authorized to file a classified report containing its budget recommendations relating to non-authorized funds with the Senate Appropriations Committee, which under the resolution could be instructed not to exceed the recommendations of the Committee on Intelligence Activities. I am quite willing to consider other similar alternatives as well.

#### Jurisdiction of Foreign and Domestic Intelligence

S. Res. 400 would add the jurisdiction of the intelligence division of the Federal Bureau of Investigation to the otherwise foreign intelligence jurisdiction of the proposed committee. I believe this is inadvisable. As Attorney General Levi testified before the Government Operations Committee, the FBI's intelligence activities relate to law enforcement. The counter-intelligence activities of the Bureau relate to enforcement of the espionage and related laws. Although certain intelligence activities of the FBI and foreign intelligence agencies may be similar, the constitutional bases, standards, and problems involved are so different that it would appear more suitable that all FBI activities be overseen by a committee other than the one concerned with intelligence activities. This position is consistent with argument asserted in some quarters that, because CIA has no internal security, law enforcement or subpoena powers, there should be no contact on the part of CIA with domestic law enforcement agencies.

#### Agency Reports

Section 4(b) of S. Res. 400 directs that the Director of Central Intelligence and other relevant agency and department heads each submit an unclassified annual report to the committee on the activities of their respective intelligence components and the intelligence activities of foreign countries directed at the United States or its interests. It would not be

possible to prepare a meaningful unclassified annual report on the activities of CIA and hostile foreign intelligence services. Therefore, the report could not make a contribution to public understanding of this Agency, or the intelligence threats facing this country, the stated purpose of this section.

Mr. Chairman, as a former Member of Congress I am particularly anxious that Congress and this Agency work together, within our constitutional and statutory responsibilities, to advance the vital foreign intelligence efforts of this Agency. CIA and Congress must also, of course, work to insure that foreign intelligence activities do not infringe upon the rights of American citizens. While I do not oppose the formation of a new Senate committee to exercise oversight, I believe certain sections of S. Res. 400 would unnecessarily harm our foreign intelligence effort. I urge the Committee on Rules to seek mutually acceptable alternatives to these sections.

I would also note as a point of interest, Mr. Chairman, that it is my understanding that the Government Operations Committee increased the membership of the proposed Intelligence Committee from 9 to 11 primarily to accommodate designated members from other Senate committees, such as Armed Services and Foreign Relations. The Committee subsequently voted against representational membership but did not reduce the number of members correspondingly. It would seem that this inconsistency should be resolved.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

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George Bush  
Director

Enclosure